In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 122

EDDIE (BUSTER) PATTON, *Petitioner*

vs.

STATE OF MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Brief For the State of Mississippi, Appellee

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TABLE OF CASES CITED IN THIS BRIEF AND PAGES WHERE FOUND

MISSISSIPPI CONSTITUTION OF 1890

Sections cited in this brief:

Section 264; Jurors must be registered and able to read and write; page 23.

Text of Section 264 of Constitution, page 23,

Section 241, Constitution, text of page 24.

Section 242, Constitution, text of page 24, 25.

Section 243, Constitution, text of page 25.

Section 244, text of pages, Brief; 25.

Qualification of voter—Need not be able to read and write, if he understands it or is able to give a reasonable interpretation thereof;

Section 248, text of page 25—Remedy if registration is denied by appeal to courts;

Section 26 referred to on page 44, 45 as to right to take shoes after arrest, page 44, 45.

STATUTES CITED IN THE BRIEF

Code of 1942, Section 1762, who are qualified to serve as jurors, page 4 to 26-27; Text of Section 1762;

Section 2505, Code of 1942, copy of special venire to be served on defendant or counsel one entire day, page 6;

Section 3224, voter may appeal from a denial of the right to register, page 25, 26;

Section 3228, appeal—May have bill of exceptions—procedure, page 25, 26;

Section 1764, who is exempt from jury duty, page 27.

Section 1765, who is exempt from jury duty as a personal privilege, page 27, Text of Section 1765, page 27;

Section 1766, list of jurors to be made up by board of

supervisors—men of sound judgment, good intelligence and fair character, able to read and write, registered voters, etc., page 27;

Section 1767—Jury list—how many put in jury list and jury box, page 28;

Section 1768—Certified copy of jury list to be given clerk of board of supervisors and put in the jury boxes, page 29;

Section 1772—Judge to draw names of jurors at each regular and special term of court, names of jurors to serve at the next term, etc., page 29;

Section 1772, text of statute, page 29;

Section 1774, jurors, if not drawn at term, judge may draw in vacation, page 29, 30;

Section 1777, sheriff to execute venire facias, page 30;

Section 1778, contempt of court not to perform jury duty, page 30;

Section 1779, number of grand juries, how drawn, etc., page 30;

Section 1780, foreman of grand jury and oath taken, impartiality, etc., page 30;

Section 1781, judge to charge grand jury, page 30;

Section 1794, procedure in case of insufficient jurors, non-attendance, etc., the court's power, etc., page 31;

Section 1794, full text of; page 31;

Section 1796, challenge to affay none except for fraud or quashed, page 32;

Section 1798, jury laws directory, page 32.

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POINT I

The evidence is utterly insufficient to show that any race discriminate was practiced in selecting jurors for jury service. It does not sufficiently appear that any registered negro had the qualifications to vote.

Constitution of 1890, Section 264, 241, and 248.

Code of 1942, Sections 1762, 1764, and 1784 and 1789.

See testimony B. M. Stephens, printed record, pages 3 to 6; Addie Rivers, 6 to 12; Cicero Ferrill, 12 to 22; Howard Cameron, 23 to 31; Judge J. A. Riddell, 48 to 53; George Beeman, pages 54 to 57; Donovan Ready, 57 to 60; E. C. Gunn, 63 to 67; L. D. Walker, 63 to 68; O. L. King, 69 to 73; William Wright, 74 to 79; Frank Kennedy, 80 to 84; W. Y. Brame, 85 to 86; See this brief, pages 1 to 16.

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POINT II

The statements and confessions of the defendant to the officers, and his pointing out articles taken from the deceased and from his store or place of business was free and voluntary and the officer's testimony in reference thereto is not disputed. The defendant might have testified on the objections thereto without testifying before the jury either on the objection or on the merits. No testimony disputes the officer's testimony. See testimony of A. B. Ruffin, 86 to 129, printed record; Martin, page 129 to 133; A. B. Ruffin, page 134 to 136; Martin Gunn, page 136; A. B. Ruffin again recalled, 136 to 141. See this brief, page 44, et. seq.

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POINT III

The evidence shows overwhelmingly that the defendant is guilty. See printed record, pages 86 to 141.

See this brief, page 45 to end.

Ranson v. State, 149 Miss. 262, 115 So. 208, p. 50.

Sauer v. State, 166 M. 507, 144 So. 225, p. 50.

Hardy v. State, 143 M. 353, 108 So. 227, p. 50.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA
1947-1948 TERM

EDDIE (BUSTER) PATTON, *Appellant*

vs. No. 122

STATE OF MISSISSIPPI, *Appellee*

BRIEF FOR APPELLEE

This is an appeal by certiorari from the judgment of the Supreme Court of the State of Mississippi affirming the death sentence for murder, by the appellant, of one Jim Meadors which case originated in the circuit court of Lauderdale County, Mississippi; there being a conviction on an indictment in due and regular form for said murder before a jury of the circuit court of Lauderdale County, Mississippi, which resulted in a death sentence for the appellant, from which he appealed to the Supreme Court of the State of Mississippi, where the judgment of conviction was affirmed. The opinion of the Mississippi Supreme Court affirming said conviction appearing in the record for the certiorari at page 227, et seq., abridged record, page 46, and the judgment of affirmance was entered on the minutes of said Supreme Court of Mississippi shown at page 237 (152 of abridged record) of the record. I will not make a detailed statement of facts in the case, but will ask the court to read the full record as I do not agree with many statements in the brief for the appellant on the motion for certiorari, and especially statements with reference to the confession made to the officers of Lauderdale County, Mississippi. There is no evidence in the record to contradict the testimony of the officers as to its being free and voluntary, neither the appellant, defendant in the court below, nor any other witnesses introduced disputed any of the facts testified to by the said deputy sheriffs, and others who testified on be-

half of the State. The appellant chose not to testify although a competent witness; and could have testified on or in the absence of the jury on the admissibility of the confession. Neither did he testify on the merits at all. He chose to be a silent party. It appears that Jim Meadors was operating a place of business about four miles south of the city of Meridian which was known, and spoken of, as a night club by some of the witnesses. It appears that this place of business was operatd from about 9:00 or 10:00 A.M. until about 10:00 P.M., and a young lady who testified in the case worked in the said place in the day time but did not work at night. On the morning following the killing of Meadors, this lady went to the place of business to work and found the dead body of Mr. Meadors in the store and called for help, calling the sheriff's office and also an undertaking establishment in Meridian. The deputy sheriffs responded to this call and also an employee of the undertaking establishment went to the place of business of the deceased to get the body to prepare it for burial, and they testified as to the facts that they found which led to the belief that the appellant was the killer. Without setting forth the evidence as to the condition of the body of the deceased, the finding of the peculiar tracks leading from the place where the killing occurred, and to the investigations made, I desire to say that the murder was one of peculiar brutality and clearly connected the defendant with the killing as the guilty agent. The original record from the circuit court to the Mississippi Supreme Court is very voluminous and it would consume quite a lot of space to set forth the testimony in detail.

When the case was called for trial in the circuit court of Lauderdale County, Mississippi, the defendant filed a motion to quash the indictment which appears in the abridged record for certiorari to the Supreme Court of the United

States on pages 2 and 3, and page 16 of the original record from the circuit court of Lauderdale County to the Supreme Court of Mississippi. This motion to quash contained three grounds appearing on page 2 of the record for certiorari.

> (1). The defendant is a negro and has been indicted by the Grand Jury during the present term of this court for the murder of a white man, and that a large percentage of the qualified electorate of the county from which the jurors are selected is of the negro race, and no member of this race was listed on the general venire summoned for the first week of this court from which the Grand Jury was drawn and empaneled, nor on the venires for either of the other weeks of this court.

(This allegation is not sustained by the proof, which shows very few negroes, if any, were qualified jurors.)

> (2). That the general venire or venires issued for this term of court, from which the Grand and Petit Juries were selected, did not contain the name or names of a single member of said race qualified for jury service.

> (3). That for a great number of years and especially since 1935, and during the present term of court and in making up the jury box from which jurors have been selected, empanneled, and sworn, there has been in this county a systematic, intentional, deliberate and invariable practice on the part of administrative officers to exclude negroes from the jury lists, jury boxes and jury service, and that such practice has resulted and does now result in the denial of the equal protection of the laws to this defendant as guaranteed by the 14th amendment to the U. S. Constitution.

Upon this motion, much testimony was taken, but there was no definite showing as to how many negroes were registered in Lauderdale County and how many were able to read and write, nor how many of those who were registered were of age for jury duty and how many were disqualified for jury service under the laws hereafter referred to or how

many complied with the requirements for jury service under section 1762 of the Mississippi Code of 1942 which reads as follows:

> "Every male citizen not under the age of twenty-one years, who is a qualified elector and able to read and write, has not been convicted of an infamous crime, or the unlawful sale of intoxicating liquors within a period of five years and who is not a common gambler or habitual drunkard, is a competent juror; but no person who is or has been within twelve months the overseer of a public road or road contractor shall be competent to serve as a grand juror. But the lack of any such qualifications on the part of one or more jurors shall not vitiate an indictment or verdict. However, be it further provided that no talesman or tales juror shall be qualified who has served as such tales juror or talesman in the last preceding two years; and no juror shall serve on any jury who has served as such for the last preceding two years; and no juror shall serve on any jury who has a case of his own pending in that court; provided there are sufficient qualified jurors in the district, and for trial at that term."

Other statutes of the State of Mississippi bearing on the qualifications will be referred to hereafter. After the motion to quash had been heard and overruled, the defendant made a motion for a special venire which was sustained and a venire was summoned by the sheriff from the qualified persons subject to jury duty and rendered to the court. Whereupon, the appellant moved to quash this special venire for several reasons, among which was that no negroes were summoned on the special venire, by the sheriff, and also because the names of the jurors were not drawn from the jury box of the county which had been refilled under provisions of law less than thirty days from the beginning of the trial. This motion was also overruled by the court and the jury was empanneled and questioned at length, and found to be fair and impartial by the trial court,

which holding was also affirmed by the Supreme Court of the State of Mississippi. The substance of the proceedings are set forth and the statutes are referred to and also court decisions hereafter in this brief.

A large amount of testimony was taken upon this motion in which the circuit clerk, the deputy circuit clerk, sheriff, chancery clerk and five members of the board of supervisors and other persons testimony was taken.

It appeared therefrom that a very few negroes had registered as voters in the said county, and most of these who had registered were either doctors, lawyers or teachers in the public schools or those who were beyond sixty years of age and were not required to serve as jurors.

The motion was overruled by the Court, and then a motion for a special venire facias was made which appears on page 18 of the record, which motion was sustained by the Court. In the order sustaining the motion for a special venire facias the Court recited as shown on page 26 of the original record:

> "And it appearing to the court that the jury box of the county has been refilled by the supervisors less than 30 days ago: Because said jury box was exhausted."

The Court thereupon directed the clerk of this court to issue to the sheriff of the county a venire facias directing the said sheriff to summon from the body of the county one hundred persons qualified for jury service, summoning twenty from each of the supervisors districts, the writ to be returnable before the court on the 27th day of February, 1946, at 9:00 o'clock A.M., and that when same had been executed, a certified copy thereof with the sheriff's return thereon showing upon whom the writ had been served and upon whom not served, together with a certified copy of the indictment in this case, be upon or delivered to the de-

fendant or his counsel for one entire day before the trial as required by Section 2505 of the Code of 1942.

The defendant duly excepted to the action of the Court in ordering the said jurors summoned from the body of the county instead of having them drawn from the jury box.

Prior to the filing of the motion for a special venire a motion for change of venue was filed and heard.

These various orders and motions seem to have been placed irregularly in the record instead of being placed in consecutive order.

Considerable testimony was offered on the motion for change of venue, and change of venue was denied; thereupon, the defendant, through his counsel, filed a motion to quash the special venire so ordered and directed to be issued from the county at large, in which motion four grounds are set forth as reasons for quashing, the first ground being that the sheriff did not draw, list or summon any member of the colored race, although there are members of the colored race qualified for jury service, and that the action of the sheriff in reference thereto was in pursuance of a well defined and invariable policy followed for years by administrative officers in this county of excluding negroes from jury service and discriminating against them in the selecting, drawing, listing, and summoning of jurors, and thus denies to the defendant the equal protection of the laws guaranteed to him by the 14th amendment to the Constitution of the United States and the laws of the Constitution of the State of Mississippi.

The second ground was that the special venire was improperly and wrongfully and illegally ordered drawn and summoned from the body of the county instead of being ordered drawn from the regular jury box of the county.

The third ground was that the writ of venire facias should not have issued to the sheriff for service but that the court should have appointed someone to serve it, or to be delivered to the coroner or other officer designated by law for service, because of the fact that the sheriff's office, that is his deputies, are interested in the conviction of this defendant and that they claim to have secured from him a confession of his guilt.

The fourth ground was that the sheriff selected and listed the names of persons he desired to summon under the writ or a large part of them before the writ was issued and did not go into the various beats and summon at random or without predetermination the requisite number of persons for jury duty.

A great deal of testimony was taken on the motion to quash, as will appear hereafter, but at the end of the testimony the judge overruled the motion to quash.

The testimony on motion to quash the indictment and on the ground of the motion to quash the special venire based upon the failure to have negroes placed in the jury box from which juries are drawn, made up and empanneled.

It appears that after the Court had appointed Honorable T. J. McDonald and L. J. Broadway to defend the appellant that the defendant, by some means, secured the employment of Mr. Broadway as a hired attorney; and after the request of this attorney, Mr. McDonald was relieved from further participation in the trial, but Mr. McDonald had participated in the motion to quash the indictment and to quash the special venire and in the motion for the change of venue.

It appears from the voluminous testimony on the motion to quash the indictment and the motion to quash the special

venire that there were very few negroes registered which is required by Section 264 of the Constitution; and, consequently, there were extremely few negroes who could qualify as jurors, and the circuit clerk estimated the number of male negroes possibly qualified for jury service at twenty-five, there being in his estimate only fifty qualified negro voters in the county, who had paid their poll taxes and were thus qualified, at fifty, one-half of which he thought were women voters, and the other twenty-five being largely composed of negroes who were teachers in public schools, physicians, lawyers or otherwise excusable from jury service, and who would not likely be put in the jury box because of the expense of summoning as jurors those who have the right to be excused, and thus they were omitted from the jury lists and jury boxes in order to save expenses.

The testimony further shows there were from 9,000 to 12,000 voters in Lauderdale County altogether from which, excluding negroes, would leave from 9,000 to 11,050 white registered voters, approximately one-half of which would be women.

The Evidence on Motion to Quash

The first witness introduced on the motion to quash the indictment was B. M. Stephens, who was connected with the City Identification Bureau and a resident of the city of Meridian who had formerly been sheriff for four years beginning in 1932 and had been a supervisor for eight years of District 3 in said county beginning in 1924.

He testified that during his term as supervisor there were no registered negro voters qualified for jury service in that district.

Another witness (Mr. King) who is now a supervisor serving his second term in that district testified that there

was only one negro registered voter in said district, and that this negro voter was a medical doctor; and, consequently, he could not be required to serve on the jury. He also testified that during his term of services as supervisor and sheriff that he had not observed any negro jurors serving in the Circuit Court. He testified that during his official term he was required to attend the Circuit Court and hear the Circuit Judge charge the Grand Jury, and that he did not think any negroes had served on the jury.

Mrs. Addie Rivers, Deputy Circuit Clerk, testified on the motion that she had been such deputy since 1942, and that she had charge of or access to the registration books of voters every day in the week; that she had never checked the books to see how many negroes were registered, and that sometime during her services Mr. Ferrill, the Circuit Clerk, had been requested by someone making up Federal juries to get such person some colored qualified electors, and that they only checked boxes in District 1 in which the city of Meridian is situated and principally inside the city, and that they found eight qualified negro jurors in that district; that they did not check all the precincts, but conformed to the request of the Federal authorities to get eight or ten negroes qualified for jury service.

She testified further that she had not registered the colored voters who were registered; that Mr. Ferrill had that authority, and that they had never registered a negro without checking the color but that she had not registered any.

Mr. Ferrill, the Circuit Clerk, was introduced on the motion, and his testimony begins on page 58 of the record. He became Circuit Clerk on the 20th day of January, 1943, beginning by serving an unexpired term of Mr. Bledsoe, who had died, and that he was since re-elected Circuit Clerk;

that he attended the Circuit Court at each term of the Criminal Court to hear the judge's charge to the Grand Jury, and that he did not recall any negroes serving on the Grand or Petit Juries; that prior to his appointment to fill the vacancy mentioned, he had been a Deputy Chancery Clerk; that when the board of supervisors made up their lists of jurors which were to serve in the Circuit Court it was a custom of the Chancery Clerk's office to turn the list over furnished by the board to one of the stenographers to have entered on the minutes, and they did not pay particular attention to the names so furnished by the board of supervisors, and that he did not know whether any negroes were placed on the lists by the members of the board of supervisors, but that he does not remember any negroes serving on the jury during the times he was either Deputy Chancery Clerk or Circuit Clerk.

He testified further that it was the custom of the members of the board of supervisors in making up the lists of jurors to check the registration and poll books, the poll books being principally used because the poll books showed not only the same persons registered upon the registration books but also showed whether the voter had paid his poll taxes in time to qualify him as an elector; that he did not know whether any negroes had been drawn during this period or not; that he did not know who was put in the boxes, but that he had never seen a negro serving on the jury. He also testified with reference to the request from Federal authorities for some negro registered voters in Lauderdale County; that it was the custom of the Federal authorities to put a few negro electors in the lists of jurors selected for the Federal Court, Meridian being one place where the Federal Court was held.

He also further testified that there were forty-nine voting precincts in the whole county, and that in District 1, in

which Meridian is situated, there were five voting precincts in the territory outside the City of Meridian. The Circuit Clerk states that he doesn't think there were over fifty negro qualified electors, but he had never checked to ascertain definitely, and that most of the negro registered voters that he knows were either preachers or teachers in the public schools or persons over sixty years of age.

It appears also from the testimony that the jury box filled at the April meeting of the board of supervisors became exhausted, and that the box was refilled.

Mr. Howard Cameron, the chancery clerk, testified that he had been chancery clerk since January, 1936, and prior to that time he was deputy chancery clerk beginning in April 1933. He testified that the members of the board of supervisors each go into the circuit clerk's office and there secure a registration roll from the circuit clerk and from this roll they prepare a list of jurors in their respective districts and after the list is prepared it is then turned over to the chancery clerk, and the chancery clerk has it copied and entered on the minutes of the board of supervisors which they then compile and certify a copy of this list and transmit it to the circuit clerk.

He was then asked if he had a very clear judgment of the number of qualified electors in the county and stated that he had his own opinion, but had been rudely shocked on several occasions; that it was a strictly personal opinion; that it was a hard thing to say how many registered voters were in the county, but he thinks there were between 8,000 and 10,000, but he did not know definitely.

He was then asked as to the number of registered voters of the negro race who were qualified electors in the county and said:

"When you say qualified electors, I presume you mean those who are registered and those who have paid their poll taxes; also those whom the supervisors feel are competent from the standpoint of being unbiased and fair-minded?"

When he was asked to give an estimate of the number of the negro race registered as voters, he said:

"Frankly, I have never given it any consideration, but I am of the opinion that there are several hundred of them."

He testified further that he had never made an investigation at all, but that he did know for a fact that there were negroes on the registration rolls and that he did know for a fact that there had been negroes to vote in Lauderdale County.

His testimony taken altogether shows that he had no definite knowledge as to the number of the negro race registered as voters and had never made any investigation along that line.

He further testified that he attended the criminal court to hear the judge charge the Grand Jury, and he never remembers to have seen a negro serving on the Grand or Petit Juries.

Mr. W. Y. Brame, sheriff of the county, testified on the motion the same as to negro jurors or registered voters, and had no definite or clear judment about the matter, but thought there might be forty or fifty negro voters in the county.

He testified that the board of supervisors in making up the jury lists frequently checked the books in his office to see if people had paid their taxes after finding their names on the registration books; that the usual practice was to take the poll books rather than the registration books, the

poll books being duplicates of the registered voters and containing additional information as to whether poll taxes had been paid by the 1st day of February.

The sheriff is required to make up lists of those who have not paid by February 1st and keep them as a record for the use of the election commissioners in revising poll books to see who are qualified electors.

The examination of all these witnesses is quite prolix and it is exceedingly difficult to state briefly and accurately the full purport of their testimony.

Mr. Tom Johnson, a member of the board of supervisors of District 2 of the county, testified on the motion. He testified that he had served as a member of the board of supervisors continuously since 1928, and had been out some years prior to that, the first term beginning in 1904. He testified that he made a search of the registration books in making up a jury list, and he didn't remember of a single negro voter in his district; that he searches the books every time the jury list is made up because the law requires that, and he didn't recall any negro voters at the time the last jury box was made up about thirty days before the witness testified. He also testified that he attended the Circuit Court to hear the judge's charge to the grand jury and public officers and didn't remember seeing any negro jurors empanneled and serving at any of the terms of court. He testified that there were five hundred or six hundred voters in his district; that in making up his list he had never had it in mind with reference to negro voters because he did not have any darkies of consequence in his beat, and had enough trouble going through the registered voters who were qualified in making up his jury lists; that in making up the jury list he tried to find men who have good intelligence, fair character and sound judgment; and that there

are naturally a lot of men in his district who have never served on juries.

Judge J. A. Riddell, of the Lauderdale County Court, testified that he had been, prior to his election as county judge, practicing law since 1931 but had a license to practice since 1916 but had served for twelve years as county superintendent of education of this county and one term in the State legislature and about sixty days as county prosecuting attorney; that he had attended the circuit court at the criminal terms to hear the judge charge the grand jury in Lauderdale County during all this time mentioned; that he didn't know of any negroes who had been called from the box and sought to be qualified or who had been qualified and taken as a member of the Grand Jury in Lauderdale County; that he had attended the circuit court more than the average person because since 1916 he had a license to practice and had some business in the courts and was interested in the courts; and that he had not seen any negroes serving on the juries.

Various other witnesses were called and the general effect of all their testimony is that there were very few qualified negroes capable of serving on Grand or Petit Juries, and that no one had seen such negroes serving on juries during such time as they testified about.

To sum up the testimony in a nut shell, it appears that there were from 9,000 to 12,000 registered voters in Lauderdale County, and not more than about sixty negroes registered who had paid their poll taxes and thus qualified to vote. It is not shown in this record how many of these registered negroes can read and write, so as to qualify as jurors for under section 244 of the Constitution of Mississippi any person can register and vote although unable to read and write, if he can understand it when read to him or

give a reasonable interpretation of it when it is read to him. Under section 248 of the Constitution, he may appeal if improperly denied registration, and may appeal through all the courts including the U. S. Supreme Court. There is not a word of testimony showing that any negro applied to the circuit clerk for registration as a voter and had been refused registration when qualified by law to vote, the negro generally being indifferent to voting.

The circuit clerk was called as a witness, as above stated, but he was not interrogated about how many negroes sought to register and how many had been refused registration, if any at all.

I desire to call the Court's attention to the testimony of Mr. Donovan Ready, page 57 of the abridged record. This witness is a public accountant, and had been employed by the board of supervisors to check the qualifications of voters for the years 1941 and 1942, at which time there was a contest as to whether the Wine and Beer Law, prohibiting sales of wine and beer in Lauderdale County had been carried in an election for that purpose. He made this check in 1944 to cover that period, and made a very careful and painstaking investigation to report to the board of supervisors on the said matter. He could not tell exactly how many negroes were registered or voted for that purpose, but thinks there were somewhere around thirty-five or forty, possibly between fifty and sixty, that he would say between thirty and sixty colored electors were qualified at that time. He testified that they were registered and had paid their poll taxes in the period required to be qualified, and at that time the largest part of them were preachers and school teachers so far as he knew about these voters' occupations. He could not tell how many were under sixty years of age; that he thought a great many were over sixty. Some were,

but not many; that he knew most of them and that is why he knew they were colored, stating:

> "They don't indicate on the record that they were colored, but they were mostly colored preachers, as I say, and colored teachers and they were middle age on the average. There were some probably over sixty, but I wouldn't say a great number of them were."

He further testified that they were predominantly preachers and teachers who were the better educated negroes of the county, and that better than half of them were preachers.

The District Attorney also examined many of the witnesses as to the motion for a change of venue, and the proof was overwhelming that there was no pre-judgment of the case by the mass of people of the county. The same thing was shown in the examination of the witnesses on the motion to quash the special venire. From all the testimony in the case it is manifest that the defendant could get as fair a trial in Lauderdale County as in any other county in the state.

Facts Concerning the Trial on the Merits

The deceased, Mr. J. L. Meadors, was operating a club or place of business about four miles south of the city of Meridian on Highway 45. He was about fifty years of age, and was last seen alive by his wife about six o'clock in the morning which he was killed. Somewhere near 11:00 o'clock that morning, Mrs. J. L. Taylor, a witness for the state who worked for the deceased and was his sister-in-law, went to the store to resume her work there and found the body of the deceased lying on the floor of the club or store dead.

She did not know how long he had been dead. She knew the defendant, who had formerly worked for Mr. Meadors but who had quit about two weeks before.

When she found the body, she called the sheriff's office and she then called the Williams Funeral Home, telling them of the finding of the body, and they came out about 11:00 o'clock—in other words, as soon as they were notified and as soon as they could get there, and the body was removed to the Williams Funeral Home.

She testified as to the bloody condition of Mr. Meadors' head and face and blood around the body, the head of the body being somewhat under the corner of the counter, and she described the position of the body.

She also identified a lunch box belonging to Mr. Meadors in which he kept the money taken in the business which he carried with him when he left the business to go to his home.

She also identified the hammer used in the place of business of Mr. Meadors for breaking coal, and with which the proof shows the deceased had been beaten by someone, the hammer being principally used for breaking coal for the heater.

She also identified a hat found in the store or club on the morning after the body was discovered which belonged to the appellant, and identified the defendant stating that they called him Buster instead of Eddie.

This witness did not work at night, and usually came to work there about 10:30, but did not go on the morning in question until around 11:00 o'clock, and described the scene as best she could about the body. The record shows this witness was deeply affected, and had to pause at times before she could resume her testimony, stating she was very nervous.

Mr. J. A. Stroud was called for the State. He works for the Williams Funeral Home as an embalmer, and handled the body of the deceased, Mr. Meadors.

He identified the clothing that the deceased had on which was introduced in evidence and described the condition of the clothing.

He examined the body for wounds, and stated that the body was bruised and beaten, his head being very badly beaten. He testified that he had gashes and cuts all over his head and face; that there were fifteen from the neck up, running from one inch to one and one-half inches from the base of his neck to the top of his head; that there were a couple of scratches on the face running from an inch to an inch and one-half to two inches in length; and that ones on the top of his head went very deep.

The state next introduced Mr. A. B. Ruffin, deputy sheriff of Lauderdale County.

He testified that on the 11th day of February, 1946, he had a call to make an investigation as to the dead body that was found at Rock Hill, which body was Mr. Jim Meadors; that he reached there about 11:00 o'clock; that he went in response to a telephone call from Mrs. Taylor; that Russell Danner and he went out there; that when they drove up to the front the ambulance had just driven up ahead of them; that he, Russell Danner and the two boys who worked with the ambulance walked inside and found that the place was terribly torn up. That a lot of broken bottles and things like that were there and blood was all over the place; that they found Mr. Meadors with his head lying partly underneath the counter on top of a case of Seven-Up bottles, partly filled; and he described the surroundings of the body, etc.

He testified that he called the coroner and held an inquest, and during the time they were searching the place for evidence of anything that would lead to the reason for the

killing, or for clues, and that they searched the place pretty thoroughly.

He found a hat underneath the ice box and testified that the long ice box was made into the counter. The hat which they found underneath the ice box was identified in the evidence as belonging to the defendant. They searched inside the building for the money and did not find it nor did they find the tin box which was introduced in evidence and called a lunch box, which proof shows Meadors had and which afterwards was found in the custody of the defendant.

He testified that they searched on the outside of the building, and found some tracks; that whoever made the tracks was running, and that the tracks were a long distance apart, the distance between the tracks being estimated at about five feet; that they were suspicious looking; and that these tracks were what they found first.

He testified further that the tracks seemed to make more pressure on the toes, and that casts were made of these tracks; that one of the heels in the tracks was run over; what is known as a run-over heel; that this run-over heel was on the right foot; that he also made a cast of the left foot which was introduced as evidence.

He further testified that later in the day the defendant was arrested; that at the time he was arrested the shoes were taken off of him, and he was wearing a pair of shoes with a part of the heel on the right shoe with a soft part in the center, which was indicated in the cast.

He testified further that the left shoe did not have any heel at all and had a rough, soft rubber sole.

The defendant then made objection that this testimony was a violation of sections 23 and 26 of the Mississippi Constitution; that if the officers took the shoes from this man,

and he testified that they did, no comparison could be made with the case or no evidence made to show that they were made by one and the same tracks until its admissibility is properly determined, which objection was overruled.

Mr. Ruffin, the deputy sheriff, testified that he had found a hat belonging to the defendant in the night club or store under the ice box; that he did not know at the time whose hat it was, and spent some little time asking people as to whom the hat belonged, and finally learned that it belonged to the defendant.

He saw the tracks, as indicated above, and their peculiarities and had casts made of these tracks which appeared to be running as above stated. On this information he had reason to believe that the appellant was then guilty, and they arrested the appellant and took the shoes from his feet and tested them and placed them in the cast and they fit the cast exactly.

Witnesses describing the peculiarities of the shoes and of the tracks and the casts made together with the information as to the hat belonging to the defendant was sufficient to justify the appellant's arrest and were reasonable grounds to believe that he had committted the felony.

The appellant, under questioning by the officers, admitted the hat belonged to him and made a full and complete confession as to the killing and the incidents of the killing and the methods used in the killing.

The appellant, then, after questioning, carried the officers to a place about half a mile northwest of the place of the killing and showed them clothes hidden in a pine top or brush heap which was the coat of deceased in which was wrapped some other garments of the deceased and also the lunch box described in the evidence which the deceased had used as a container for his money while at his place of busi-

ness and conveying it to his home for safekeeping at night, and in this lunch box were some other little articles described by the witness.

Another deputy carried the appellant to the place where the clothes were pointed out, and the testimony showed that this confession was not induced by threats or promises or hope of reward, and was clearly admissible.

The appellant also carried the officers to another point, some distance from where the clothes were found, where the money was hidden, and he confessed that he had secreted the money at that place, and that he had taken it from the place of the deceased at the time of the killing.

The defendant confessed to the officers in detail as to the means and methods of the killing which showed it to be a brutal and unprovoked murder.

On the night of the killing, the appellant carried the shirt and pants to a dry cleaner in the city of Meridian to have them dry cleaned and pressed, and the pants had indications of blood on them, and in the pants pocket was a ticket with appellant's name on it which showed the pants and shirt were to be delivered on Tuesday, the day following the placing of them in the dry cleaning establishment for cleaning and pressing.

The appellant had on clothes that were fresh when he was arrested, and stated to the officers that he had just changed clothes Monday night after the pants and shirt had been left for cleaning and pressing. The officers had gotten this information by the confession of the appellant or by his statement in answer to questions, and they called the owner of the pressing shop to come down to the shop so they could get the clothing which the appellant had left there. This was after the closing hour of the shop, and the owner

of it left his home and went to the shop and delivered the pants and shirt to the officers, who were deputy sheriffs, and these were introduced in evidence.

There was a great deal of testimony introduced, and the defendant did not testify at all either on the preliminary objection to the admission of his confession and the statements made by the appellant and the production of the articles in Court and the introduction of them in evidence although the defendant had opportunity should he have desired to testify to any facts that might have existed inducing the confession when that was offered in evidence without testifying if he did not want to testify on the merits. In other words, the testimony of the officers, as shown, is utterly without dispute. There is, therefore, nothing doubtful about the appellant's guilt of the murder and of his doing the things testified to by the officers.

A person has a perfect legal right to testify in his own behalf should he desire to do so or he has a right to remain silent and stand on the State's evidence, but if he exercises this latter right, then the jury is entitled to draw every reasonable conclusion that the evidence warrants; and, therefore, the evidence should be accepted as being true unless it is inherently improbable or false. Such is not the case in the evidence involved here.

ARGUMENT

I submit that there are many facts in the original voluminous record that are not set forth in this Statement of Facts.

The first point in the argument of the appellant is that the lower court erred in overruling the appellant's motion to quash the indictment against him on the ground of systematic exclusion of qualified negroes from jury service,

and in so ruling, denied to the appellant his rights of due process of law and equal protection of the laws granted him by the State Constitution and the 14th amendment of the Constitution of the United States. In other words, the appellant seriously argues the exclusion of negroes from the jury box and the special venire selected by the Sheriff.

This argument should not have been injected into this case on the facts contained in this record and under the laws of the State. I say this with due regard and friendship for the attorneys for the appellant who injected this question into this record, and do not doubt that they felt called upon to do so, and did so out of a regard for what they thought they should do in this case. Nevertheless, there was no probability at all that under Section 2464 of the Constitution negro jurors could be obtained under any reasonable method of drawing the jury in this case.

The record shows that there were some 9,000 to 12,000 registered voters in Lauderdale County and that only from 30 to 60 of these were negroes qualified to vote; but no showing was made as to how many could read or write as required by Section 264 of the Constitution and the major part of the negroes who were registered were not subject to jury duty under the laws of the State, being either over age or excusable for other reasons and could not be compelled to serve had they been singled out and summoned.

I desire, before going into the authorities on this proposition, to call attention to some provisions of the Constitution and the laws of this state. The State, of course, has the right to say what qualifications jurors shall have to administer the high trust involved in jury duty.

Section 264 of the State Constitution reads as follows:

> "No person shall be a grand or petit juror unless qualified elector and able to read and write; but the

want of any such qualification in any juror shall not vitiate any indictment or verdict. The legislature shall provide by law for procuring a list of persons so qualified, and the drawing therefrom of grand and petit jurors for each term of the circuit court."

There is no legal method of compelling any person to register or vote or to qualify for jury service under this section of the Constitution. The term in the above section "unless a qualified elector and able to read and write" is to be construed in connection with the provisions on the franchise contained in article 12 of the Constitution and particularly with reference to Sections 241, 242, 243 and 244 of the Mississippi Constitution.

In section 241 of the Constitution, it is provided:

"Every inhabitant of this state, except idiots, insane persons, and Indians not taxed, who is a citizen of the United States, twenty-one years old and upwards, who has resided in this state for two years, and one year in the election district, or in the incorporated city or town in which he offers to vote, and who is duly registered, as provided in this article, and who has never been convicted of bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement or bigamy and who has paid on or before the first day of February of the year in which he shall offer to vote, all poll taxes which may have been legally required of him and which he has had an opportunity of paying according to law, for the two preceding years, and who shall produce to the officers holding the election satisfactory evidence that he has paid such taxes, is declared to be a qualified elector; but any minister of the gospel in charge of an organized church shall be entitled to vote after six months' residence in the election district, if otherwise qualified."

Under Section 242 of the Constitution of Mississippi it is provided:

"The legislature shall provide by law for the registration of all persons entitled to vote at any election."

It cites further the oath that parties securing registration must take, in which oath he must swear that he is not disqualified for voting by reason of having been convicted of any crime named in the Constitution as a disqualification to be an elector, and that he will answer truthfully all questions pertaining to the right to register and vote.

Section 243 provides for:

> "A uniform poll tax of two dollars, *to be used in aid of common schools, and for no other purpose,* is hereby imposed on every inhabitant of this state, male or female*, between the ages of twenty-one and sixty years, except persons who are deaf and dumb, or blind, or who are maimed by loss of hand or foot, etc."

Section 244 provides that:

> "On and after the first day of January, 1892, every elector shall, in addition to the foregoing qualifications, be able to read any section of the Constitution of this state; or he shall be able to understand the same when read to him, or give a reasonable interpretation thereof. A new registration shall be made before the next ensuing election after January the first, 1892."

Section 248 of the Constitution provides for an appeal from a refusal of registration, and has an important bearing on the question involved in the first Assignment of Error argued by the appellant. The section reads as follows:

> "Suitable remedies by appeal or otherwise shall be provided by law, to correct illegal or improper registration and to secure the elective franchise to those who may be illegally or improperly denied the same."

The Legislature has provided this method of appeal, and every voter has the right to appeal the registrar's decision denying him to right to vote and have a judicial hearing thereon, and this right he may exercise to the utmost limit

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*The word female was not in the original Constitution but was inserted after the adoption of woman suffrage.

by appealing to every court including the Supreme Court of the United States. See Code of 1942, Section 3224, and 3228.

As stated in the beginning of this brief, there is no proof whatever that any negro was denied the right to register or to vote in Lauderdale County.

The Circuit Clerk is the registrar under the law, and from his refusal an appeal may be taken to the circuit court and from thence to the State Supreme Court and from thence to the United States Supreme Court. This being true, the officers in making up the jury lists did not have more than one-half of one per cent of the registered voters to select any negroes from, and the law does not require any particular person to be selected for jury service from the lists of registered voters of the county.

Mississippi has never authorized women to sit on juries, and the record shows that approximately fifty per cent of the voters who are registered are women.

I will now refer to some of the statutes involved to show that the application to quash the indictment and to quash the special venire are utterly without merit, and should not be raised in this case, because there is no showing in the record that there was any qualified negroes under Section 1762 of Mississippi Code 1942. There may be cases, and no doubt are, where counsel should raise the question for the protection of his client, and I would not criticize the raising of the question in some cases where there was a probability of securing classes of persons who were not on the jury lists or in the jury box.

Section 1762 of the Code of 1942 provides that:

> "Every male citzen not under the age of twenty-one years, who is a qualified elector and able to read and

write, has not been convicted of an infamous crime, or the unlawful sale of intoxicating liquors within a period of five years, and who is not a common gambler or habitual drunkard, is a competent juror; but no person who is or has been, within twelve months the overseer of a public road or road contractor shall be competent to serve as a grand juror. But the lack of any such qualifications on the part of one or more jurors shall not vitiate an indictment or verdict."

It also provides for talesmen of a jury, etc., which is not pertinent here.

Section 1764 provides who shall be exempt from jury duty, and includes all physicians, osteopaths and dentists actually in practice, all teachers and officers of public schools and locomotive engineers actually engaged in their vocation; and a large number of other persons including all ministers of the gospel and Jewish rabbis actually engaged in their calling, all officers of the Government of the United States, all lawyers practicing their profession, and others numerous in said section.

Section 1765 provides who are exempt as a personal privilege, and reads as folows:

> "Every citizen over sixty years of age, and everyone who has served on the regular panel within two years, shall be exempt from service, if he claims the privilege; but the later class shall serve as talesmen and on special venire, and on the regular panel, *if there be a deficiency of jurors.*" (Emphasis added.)

Section 1766 provides for the making of the list of jurors by the board of supervisors at the April meeting of each year or at a subsequent meeting if not done at the April meeting, and they shall select and make a list of persons to serve as jurors in the Circuit Court for the twelve months beginning more than thirty days afterwards, and provides that as a guide in making this list they shall use the regis-

tration book of voters, and shall select and list the names of qualified persons of good intelligence, sound judgment, and fair character, and that they shall take them as nearly as they conveniently can, from the several supervisor's districts in proportion to the number of qualified persons in each, excluding all who have served on the regular panel within two years. It also provides that the Clerk of the Circuit Court shall put the names from each supervisor's districts in a separate box or compartment, kept for the purpose, which shall be locked and kept closed and sealed, except when juries are drawn. It also provides that the board of supervisors shall cause the jury box to be emptied of all names therein, and the same to be refilled from the jury list as made by them at said meeting. It then provides if the jury box shall at any time be so exhausted of names as that a jury cannot be drawn as provided by law, then the board of supervisors may at any regular meeting make a new list of jurors in the manner herein provided. It is then made the duty of the Circuit Clerk and the registrar of the voters to certify to the board of supervisors during the month of March of each year under the seal of his office the number of qualified electors in each of the several districts in the county.

In the present case the box, as made up at the April term, became exhausted during the year, and was refilled less than thirty days before the time of the drawing of the special venire and empaneling of the Grand jury.

The list of jurors made up under this chapter does not require the listing of every voter as a juror, but limits the number that may be listed in such list unless there be a deficiency of jurors in which case the court may order a greater or less number to be listed. (Section 1767.)

Section 1768 provides:

> "A certified copy of the lists shall be immediately delivered by the clerk of the board of supervisors to the clerk of the circuit court, and shall be by him carefully filed and preserved as a record of his office; and any alteration thereof shall be treated and punished as provided in case of the alteration of a record."

As already stated, the county contained from 9,000 to 12,000 registered voters. The law limits the number that could be selected, and no more than eight hundred can be put on the list unless ordered by the Circuit Court because of the reasons mentioned.

Section 1772 of the Code provides:

> "At each regular term of the circuit court, and at a special term if necessary, the judge shall draw, in open court, from the five small boxes enclosed in the jury box, slips containing the names of sixty-two jurors to serve as grand and petit jurors for the first week and thirty-six to serve as petit jurors for each subsequent week of the next succeeding term of the court, drawing the same number of slips from each and every one of the five small boxes if practicable, and he shall make and carefully preserve separate lists of the names, and shall not disclose the name of any juror so drawn; but only thirty-six names shall be drawn for each week or any term where a grand jury is not to be drawn. The slips containing the names so drawn shall be placed by the judge in envelopes, a separate one for each week, and he shall securely seal and deliver them to the clerk of the court, so marked as to indicate which contains the names of the jurors for the first and each subsequent week. If in drawing it appears that any juror drawn has died, removed or ceased to be qualified or liable to serve as a juror, the judge shall cause the slip containing the name to be destroyed, the name to be stricken from the jury list, and he shall draw another name to complete the required number."

Section 1774 provides if this is not done in term that the

judge may draw them in vacation, if convenient; and if he does not, and whenever jurors are required for a special term and the judge shall so direct, the clerks of the circuit and chancery courts and the sheriff shall, at the time they should have opened the envelopes, draw the jurors for the term of court, and make and certify the lists thereof; and the clerk shall issue and deliver to the sheriff the proper venire facias.

Section 1777 of the Code provides that the sheriff shall forthwith execute the venire facias by summoning each juror at least five days before the first day of court either by personal service or by leaving a written notice at his usual place of abode; and he shall make return of the venire on the first day of the term, and this section provides for fining of jurors if they do not attend as commanded unless they show good cause.

By Section 1778 it is made a contempt of court not to perform the duties as to juries when so listed and summoned.

Section 1779 provides that the number of grand jurors shall not be less than fifteen nor more than twenty, in the discretion of the court; and that they shall be drawn from the list of persons in attendance as jurors on a separate slip of paper, and the names from each supervisor's district shall be placed in a separate box or compartment, in open court, and shall be drawn out by the person designated by the judge, the number directed by the court; and said names shall be drawn from each box in regular order until the number designated is drawn, and the jurors whose names are so drawn shall constitute the grand jury; and be empaneled and sworn as such. The court shall poll the jury to ascertain whether any juror is directly or indirectly interested in the illicit sale of vinous, malt or spirituous liquor.

The court then appoints a foreman of the grand jury under Section 1780, and that section prescribes their oath which it will be seen is very strict in securing impartial action by the grand jury, and each member of the grand jury must also take an oath to the same effect.

Section 1781 requires the circuit judge at each term of the criminal court to charge the grand jury concerning its duty and to expound the law to it as he shall deem proper, and he shall give it in charge certain actions mentioned therein.

Section 1783 provides that all county officers shall attend the criminal term of the circuit court and hear the judge's charge to the grand jury and the judge's charge to such officer.

It will be seen from a careful study of these sections that they are designed to secure a fair and just administration of the law, and to secure fair trials and prevent malicious prosecutions, etc.

Section 1794 of the Code provides that:

> "If at any regular or special term of a circuit court it appears that jurors have not been drawn or summoned for the term, or for any part thereof, or that the jurors have been irregularly drawn or summoned, or that none of the jurors so drawn or summoned are in attendance, or not a sufficient number to make the Grand Jury and three Petit Juries, the court shall immediately cause the proper number of jurors to be drawn from the box and summoned, or, if there be not a jury box to be drawn from, the court shall direct the requisite number of persons qualified as jurors, to be summoned to appear at such time as the court shall appoint, and the court shall thereupon proceed as if the jurors had been regularly drawn and summoned."

The empaneling of the Grand Jury is conclusive of their competence, Reynolds vs. State, 199 Miss. 409, 24 So. (2d)

page 781; see Moon vs. State, 176 Miss. 72, 168 So. 476. In Moon vs. State, 176 M. 72, it was held that during the thirty days of the box was refilled a drawing from the box could not be had. See Sec. 1784, Code 1942; Pearson vs. State, 176 M. 9, 167 So. 644.

In the case before us there was no jury box available under the decisions of our court and the jurors could not be drawn from the box during the thirty day period when the box was refilled for a court which was held during that period.

By section 1796 of the Code, a challenge to the array shall not be sustained, except for fraud, nor shall any venire facias, except a special venire facias in a criminal case, be quashed for any cause whatever.

There certainly could be no fraud in the manner in which the special venire was drawn, and consequently it could not be quashed.

By Section 1798 of the Code the jury laws are directory merely, and it is only where there is a departure from the statutory scheme in the manner that prejudices the rights of the party that the jury will be abated for any irregularity.

It is submitted that under these various statutory provisions that in this case on its peculiar evidence a question of failure to have negroes on the jury or summoned as jurors is without prejudice.

I call the Court's attention to the remarkable fairness of the jury that was empaneled in this case to try the case without prejudice, without any desire to do anything except what was right and proper under the law. They were examined at great length and were examined with reference among other things as to whether they would give a negro a fair trial where the killing was a killing of a white man,

and also as to whether they would require an extreme case or a very strong case before they would inflict the death penalty.

It is seldom you see where the question is raised on whether the jury would inflict the penalty of death in case of guilt, the matter being entirely in the discretion of the jury if they believe the case of murder has been made out. I have strongly been impressed with these juries' statements and views that would require an extraordinary case of murder before they would inflict the death penalty, and no complaint can be justly made of the jury who actually tried the case and no question at all as to the guilt of the appellant on the facts and evidence.

The murder was one of peculiar atrocity, and was inspired by a desire to rob the deceased. The fact that he was brutally beaten to death seemed, from this record, to have been done merely to secure the money and suppress the evidence that would exist of robbery.

I am aware that the Constitution of the United States as construed by the Supreme Court of the United States makes a willful or purposeful discrimination against negroes or other classes will cause the Supreme Court to reverse a case where the record shows that a considerable number of negro voters existed in the jurisdiction where the crime was committed were eligible for jury service, and that it is not permissible to discriminate by purposeful desire not to have a particular class on the jury. This matter was specifically decided in the case of Norris v. the State of Alabama, 294 U. S. 587, 55 S. Ct 579, 79 L. Ed. 1074, and Hale v. Kentucky, 303 U. S. 613, 82 L. Ed. 1950, under which case the rule was announced:

"A systematic and arbitrary exclusion of negroes from grand and petit jury lists because of their race

and color constitutes a denial to a negro charged with crime of the equal protection of the laws guaranteed by the Fourteenth Amendment."

Attention must be given in studying these cases to the language used by the Federal Court solely because of their race or color.

In the report of this case in the 82nd L. Ed. (page 1053) there is a case note with reference to the violation of the constitutional rights in criminal cases by unfair practices in selection of grand or petit juries; and at page 1055 under the heading "Application of a Rule to a Particular Race or Class" and sub-heading "Negroes", many cases are cited dealing with unfair practices by leaving races entitled to jury service off the lists or out of the enrollment of those who are discriminated against.

These is also an elaborate case note in 52 A. L. R. 916 appended to the case of Passar v. County Board reporting this case as being a Minnesota case with a case note appended (page 919).

I desire to call the Court's attention to the language used in the Am. St. Report case note quoted from Smith v. State (Oklahoma) 4th Okla. Crim. Rep. 128, 140 Am. St. 688, in which the following language was used by the Supreme Court of Oklahoma:

"The 14th Amendment to the Constitution of the United States does not require the jury commissioners, or other officers charged with the selection of juries, to place negroes upon the jury list simply because they are negroes. The allegation that the jury was composed solely of white men does not violate the 14th Amendment to the Constitution of the United States, and proof of that fact would not support the motion. The ground upon which the decisions of the Supreme Court of the United States rest is not that negroes were not selected to sit upon juries, but that they were excluded

therefrom *solely on account of their race or color.* In other words, there is no law to compel the jury commissioners, or other officers of the court, to select or summon negroes as jurors. They can select any persons whom they regard as competent to serve as jurors without regard to their race or color, but the law prohibits them from excluding negroes *solely on account of their race or color.* Therefore the judge should have heard the testimony, and, if he found from the evidence that there was an agreement among the jury commissioners to exclude negroes from the jury panel simply because they were negroes, or that the officers charged with the duty of selecting and summoning said jurors had refused to select or summons negroes on the jury, and had excluded them therefrom solely upon the ground that they were negroes, then the judge should have sustained said motion. There is no law requiring an officer to place negroes on the panel simply because they are negroes. It is his duty to select the best jurors without regard to race or color. When this is done, the law is satisfied."

This language is taken from 140 Am. St. Rep. 688, which I verified by comparison.

Our own court was in accord with the Oklahoma court upon this question as shown by Lewis v. State, 91 Miss. 505, 45 So. 360, quoted from in appellant's brief. In this Lewis case our court, speaking through Justice Mayes, said:

"There is nothing in our jury law which does not apply with equal force to all citizens, whatever be their race or color. It is a mistaken impression, which seems to have become prevalent, that in order to constitute a valid jury there must be some negroes in the jury list. Such is not the case. A jury may be composed entirely of negroes, or it may be composed entirely of white persons, or it may be composed of a mixture of the two races; and in either and in any case it is a perfectly lawful jury, provided no one has been excluded or discriminated against simply because he belongs to one race or the other."

Our court has also held in Farrow v. State, 91 Miss. 509, 45 So. 619, in accordance with the Federal Court:

> "That where a county board of supervisors, in selecting a list of persons qualified for jury service, knowingly and in accordance with a well established practice, and for the purpose of depriving negro citizens of participating in the administration of justice, and intentionally, keep off the names of negroes from such list, an indictment returned by a grand jury drawn from such jury list should be quashed."

These cases show clearly that where the omission or exclusion of negroes from the jury list was solely for the purpose of preventing negroes serving as jurors in the court and not where the board of supervisors in making up the jury lists selects merely the jurors for their mental and moral qualifications; that is to say, selects men of good intelligence, sound judgment and fair character, from those who have registered and qualified to vote. However, our statutory and Constitutional provisions have been twice before the United States Supreme Court since 1890, the statutes being substantially the same on this question now as then.

In Gibson v. State of Miss., 162 U. S. 567, 40 L. Ed. 1078, our statutes and Constitution were upheld upon this question, the opinion being written by that eminent jurist, Justice Harlan, which appears on page 1078 of the Law Edition Reports. The Court, after citing earlier cases which had held that discrimination against the negro because of race or color alone would render a proceeding a denial of equal protection and due process of law, said:

> "The cases cited were held to have decided that the statutory enactments referred to were constitutional exertions of the power of Congress to enact appropriate legislation for the enforcement of the 14th Amendment, which was designed, primarily, to secure to the colored race, thereby invested with the rights, privileges, and responsibilities of citizenship, the enjoyment of all the

civil rights that, under the law, are enjoyed by white persons; that while a state, consistently with the purposes for which the amendment was adopted, may confine the selection of jurors to males, to free-holders, to citizens, to persons within certain ages, or to persons having educational qualifications, and while a mixed jury in a particular case is not, within the meaning of the Constitution, always or absolutely necessary to the enjoyment of the equal protection of the laws, and therefore an accused, being of the colored race, cannot claim as matter of right that his race shall be represented on the jury, yet a denial to citizens of the African race, *because of their color,* of the right or privileges accorded to white citizens of participating as jurors in the administration of justice would be a discrimination against the former inconsistent with the amendment and within the power of Congress, by appropriate legislation, to prevent; that to compel a colored man to submit to a trial before a jury drawn from a panel from which were excluded, *because of their color,* men of his race, however well qualified by education and character to discharge the functions of jurors, was a denial of the equal protection of the laws; and that such exclusion of the black race from juries because of their color was not less forbidden by law than would be the exclusion from juries in states where the blacks have the majority, of the white race because of *their* color." (Emphasis by the Court.)

Further on in this same opinion, page 1079 of the Law Edition, the Court said:

"We may repeat here what was said in Neal v. Delaware, 103 U. S. 370, 385, 386 (26: 567, 569, 570), namely: that in thus construing the statute 'we do not withhold from a party claiming that he is denied, or cannot enforce in the judicial tribunals of the state, his constiutional equality of civil rights, all opportunity of appealing to the courts of the United States for the redress of his wrongs. For, if not entitled, under the statute, to the removal of the suit or prosecution, he may, when denied, in the subsequent proceedings of the state court, or in the execution of its judgment, any

right, privilege, or immunity given or secured to him by the Constitution or laws of the United States, bring the case here for review."

In this provision the Court held that our Constitutional and statutory provisions were not discriminatory on their face, and that there was nothing in that case that showed discrimination by administrative officers of the State.

It, therefore, clearly appears that where the juries are fairly selected and where all the voters of the State are not required to be placed in the jury box or jury lists, but may be selected from such registration lists for their qualities of intelligence, morality and patriotism are like causes.

In Williams v. Mississippi, 170 U. S. 213, 42 L. Ed. 1012, our statutes and Constitution on the subject were again reviewed and held to be valid. In this opinion at page 1015 of the Law Edition, page 222 of Official Edition, the Court in discussing the Constitutional laws of Mississippi said:

> "Restrained by the Federal Constitution from discriminating against the negro race, the convention discriminated against its characteristics and the offenses to which its weaker members were prone. But nothing tangible can be deducted from this. If weakness were to be taken advantage of, it was to be done 'within the field of permissible action under the limitations imposed by the Federal Constitution,' and the means of it were the alleged characteristics of the negro race, not the administration of the law by the officers of the state. Besides, the operation of the Constitution and laws is not limited by their language or effects to one race. They reach weak and vicious white men as well as weak and vicious black men, and whatever is sinister in their intentions, if anything, can be prevented by both races by the exertion of that duty which voluntarily pays taxes and refrains from crime."

One of the later cases by the Supreme Court of the United States is that of Edgar Smith v. State of Texas, 311 U. S.

128-132, 85 L. L. Ed. page 84. In this case the United States Supreme Court held that:

> "A charge of racial discrimination in the selection of grand jurors is supported by evidence that in a county in which negroes constitute over 20 per cent of the population and almost 10 per cent of the poll-tax payers, and a minimum of from 3,000 to 6,000 of them measure up to the statutory qualifications for grand jury service, only 18 of 512 persons summoned over an 8-year period for grand jury duty were negroes, that of the 18 the names of all but one were so far down on the list from which the grand jury was made up as to render it unlikely that they would be reached, that in fact only five ever served, and that of these five the same individual served three times, so that only three individual negroes served at all, whereas 379 of the 494 white men summoned actually served, and of 32 grand juries impaneled only five had negro members, and that while two of the three commissioners who drew the panel for the grand jury by which defendant was indicted denied that they intentionally, arbitrarily, or systematically discriminated against negro grand jurors as such, one said that their failure to select negroes was because they did not know the names of any who were qualified, and the other said that he was not personally acquainted with any member of the negro race."

In this case and in other cases in the United States Supreme Court it has been held that where there were a large number of negroes qualified for jury service, and none over a long period had been selected to so serve, the Court would treat this as sufficient evidence of discrimination. The Court has also held that it would decide for itself the facts involved in the case where Federal rights, privileges or immunities are involved in the case.

In the second syllabus in this case this rule was announced as follows:

> "On an appeal to the Supreme Court of the United States from a conviction of crime in a state court on

the ground of invasion of constitutional rights, the Supreme Court will, notwithstanding a state court has held the evidence insufficient to establish such invasion, determine for itself the sufficiency of the evidence."

In studying these cases it should be borne in mind the facts as to whether negroes are qualified to serve on juries merely because they were registered voters and on the other hand where the juries are to be selected as in Mississippi because of their good intelligence, sound judgment and fair character and where they must also be registered voters able to read and write under the Constitution of the State. It should also be borne in mind that there is no way to compel negroes or others to register; that is optional. Also, there is nothing to prevent them from registering and qualifying for jury service.

If our laws provided that all registered voters should be entitled to serve on juries there would be a serious question in this case although the number actually registered was exceedingly small—not exceeding one-half of one per cent of the total registered voters. But as the statute has limited the number that can be selected in one year from the total registered voters and requires the board of supervisors to select those "of sound judgment, good intelligence and fair character" the board is charged with the duty of selecting those who are best suited and qualified to render safe and efficient service in the jury box. There are very many registered white voters able to read and write and having the qualities of "good intelligence, sound judgment and fair character" who cannot be placed in the box or on the list and who may never serve in the capacity of jurors although they possess all the necessary educational and moral qualifications required.

The Federal Constitution prohibits the exclusion of a race or class from the jury box, but it does not require any par-

ticular jury to be composed of all members of the class or race involved, and much depends on the State law as to who will be qualified or who will be treated as available for jury service. The chief object is to get a fair and impartial jury. This is a Constitutional guaranty, and when the jury is such, the verdict should not be disturbed for mere technical errors in their selection.

In many of the states, women serve on juries under the State Laws and Constitution, while in many other states they do not serve, and the Supreme Court in the late case of Edna W. Ballard v. United States, 91 L. Ed., (Adv.) Page 195, held that where women were permitted to vote under State Constitution Laws and were systematically and continuously excluded from serving as jurors in certain territories or parts of the State was a discrimination against women which rendered the indictment and judgment void. This case originated in the Federal Court and in the State court, but was pointed out that the Federal Court by statutes of the United States followed State procedure as to he selecting and impaneling of juries. On page 196 of this L. Ed. Advance Opinions of the Court said:

> "We are met at the outset with the concession that women were not included in the panel of grand and petit jurors in the Southern District of California where the indictment was returned and the trial had; that they were intentionally and systematically excluded from the panel. This issue was raised by a motion to quash the indictment and by a challenge to the array of the petit jurors because of intentional and systematic exclusion of women from the panel."

Further on, at page 197, in discusing the rights of jury trials as conceived in this country, it is said:

> "The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. . . . This does not

mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury."

It will be seen by an examination of all the many cases cited in this brief that the discrimination must be because of an intentional denial of persons or classes or races entitled to serve on juries for the purpose of denying such groups, persons or races the right to participate in the judicial administration of the laws of the country.

I submit that as the law of Mississippi requires the jurors to be selected from a list of registered voters able to read and write, and this list to be recorded in the chancery clerk's office, immediately after being selected as a matter of public recorded that a challenge of the legality of the jury should be made, not in a particular case, but in a general proceeding in all persons may join either with the movement to quash or those who wish to sustain the board of supervisors in resisting the motion to quash and that this must be done within sixty or ninety days. The laws of the State are designed to get reasonably qualified jurors of fair disposition and intelligence rather than by numbers or proportions and similar unsuitable standards.

Reading a case without studying the factual basis often misleads because the Court frequently uses broad language to express their decisions which is supported by the basic

facts of the particular case but might not be applicable to other case having different factual basis.

When the Constitutional and statutory provisions of Mississippi are considered and applied properly to the facts in this case, the manner of selecting the grand jury which returned the indictment and the selection by the sheriff and his deputies of a special venire afford no reasonable basis for upsetting the action of the Court in this regard.

I deem it unnecessary to enter into the many other questions and cases cited in the brief of the appellant. Only a few authorities will be noticed in addition to what I have said which I conceive to be the only questions that should engage the attention of the court in considering this appeal.

On the point that the jury should have been drawn from the box notwithstanding less than thirty days had passed since the box was refilled, our Supreme Court expressly passed upon this propositon in Pearson v. State, 176 Miss. 9, 167 So. 644, speaking through Judge Anderson, construed the statute involved, and expressly held that the jury and the box were not available for selecting a jury for a period within thirty days from the date of refilling the box.

The counsel for the appellant criticised this opinion as being unsound and contrary to the real purpose of the statute. Counsel, of course, has a right to his personal opinion, but the judicial and other departments of the government must and should follow the decisions of the Supreme Court of the State in construing the statutes. The Court has a right, and is under duty to declare the law according to its judgment after considering the facts and the arguments and prior authorities of the State.

The case of Lee v. State, referred to by counsel on page 26

of his brief, was a case where more than thirty days had expired between the filling of the box and the drawing of the special venire, and the court in that case held that where more than thirty days had expired the jury box was available for drawing of jurors although thirty days had not expired when the term of Court began.

The two cases are in no way inconsistent, and the Court should follow the Pearson case because the court below was obliged to do so and probably had this case in mind when directing the special venire to be drawn from the body of the county.

There is nothing improper in this, and it is in acordance with the law.

The sheriff is a high official of the county and will be presumed to have done his duty conscientiously, fairly and impartially.

When the evidence in this case is examined the testimony of the sheriff and the deputies who selected and summoned the special venire make absolutely certain that fairness was used and that the sheriff had no interest in the suit to procure any result in the trial; but, on the contrary, selected men whose testimony is in the record and shows that the jury desired to act strictly in accordance with justice and the law.

On the trial on the merits counsel complains of the taking of the shoes worn by the appellant after he had been arrested and fitting them into the casts made of the tracks found running from the scene of the killing and having peculiarities with which the shoes worn by the appellant corresponded precisely. Counsel seemed to think that by taking the shoes it was an unlawful search and seizure in violation of his Constitutional rights and that it made him

give evidence against himself contrary to Section 26 of the Constitution.

I take it that there is no doubt about the law that a person may be arrested wherever a felony has been committed and there is probable cause to believe that the person arrested committed the crime. Code 1942, Section 2470.

When the sheriff's deputies went out to the scene of the killing and investigated the building and around the building, they found a hat under the ice box which was identified as the hat belonging to and worn by the appellant and which the appellant subsequently admitted was his hat and which there is no proof to dispute in this record. The fact that the appellant had previously been employed by the deceased and the tracks of a peculiar nature were discovered apparently made by a person running at full speed as shown by the evidence was certainly sufficient to constitute probable cause to arrest the appellant. Code 1942, Section 2470.

When the hat was found, inquiry was made and some time spent in finding out whose hat it was, and dependable information was secured that it belonged to the appellant. This being true, the arrest was a lawful arrest considered solely by the facts discovered prior to the arrest.

When the arrest was made the shoes were taken from the feet of the appellant as it was lawful to do after the arrest, the law being that when a person is arrested he may be searched and anything taken from him that tends to establish the crime or which tends to facilitate his escape.

In Toliver v. State, 133 Miss. 789, 98 So. 342, Toliver had been arrested by an officer, and his automobile was searched without a search warrant or any affidavit for a search warrant, and the car was found to contain intoxicating liquor which was prohibited by law. It was con-

tended in that case that the law of search after an arrest did not apply to the car but was limited, if lawful at all, to the search of the person. But the Court held that the search was authorized and that the car was a means of facilitating an escape and that the officer had a right to take the car and take the contents into his possession, and if the contents showed a violation of the law the evidence was admissible.

In the case of Pringle v. State, 108 Miss. 802, 67 So. 455, Pringle was arrested and a letter taken from his person of an incriminatory nature, and the Court held an incriminatory letter found on the accused was admissible though wrongfully obtained after his arrest.

In Williamson v. State, 140 Miss. 841, 105 So. 479, Williamson was traveling on the highway when met by an officer who asked him what the kegs in the car contained, and Williamson replied that the kegs contained whiskey before arrest or search was made, whereupon the liquor was seized without a warrant and introduced in evidence as a violation of prohibition laws.

In Bird v. State, 154 Miss. 493, 122 So. 539, it was held that where a person was arrested the taking from a person of a hack saw and other articles at the time of arrest for burglary was admissible in evidence.

In Watson v. State, 166 Miss. 194, 146 So. 122, valises and the contents thereof found in an automobile searched by the officers having probable cause to believe that the traveler whom they arrested was guilty of a felony were lawfully secured and hence admissible in evidence.

The evidence obtained by the comparison of the shoes worn by the defendant with the tracks found near the place of the crime and which fitted said tracks and also corresponded with the casts made by the deputy sheriff of the

said tracks, and the tracks and the shoes having the same pecularities made certain or reasonably so that the shoes worn by the defendant made the tracks near the scene of the crime.

Subsequent to such arrest, the appellant admitted that he committed the crime, and pointed out to the officers, as indicated above, where the clothing, lunch box and other things were hidden and to another place where the money which appellant confessed was taken from the lunch box used by the deceased and was carried away and secreted.

Furthermore, on the very day of the crime appellant carried his shirt and pants to the cleaners, as above stated, in the Statement of Facts and his statement to the officers being made freely and voluntarily and all of the evidence of the State being uncontradicted there can be no doubt of appellant's guilt.

The crime was one of peculiar atrocity and deserves the most severe punishment authorized by law. This being true no mere technical ruling or decision even if error would warrant reversing this case.

The Court has often decided that it would not reverse a case where guilt was conclusively established. The whole object of the law is to secure to every defendant a fair trial and also a fair trial to the prosecuting power to the end that justice may be done according to law.

Counsel for the appellant at page 15 of their brief states:

> "Testimony presented before the Special Committee to Investigate Senatorial Campaign Expenditures, 1946—79th Congress at hearings held in Jackson, Mississippi, on the 2d, 3d, 4th and 5th days of December, 1946, showed a state-wide condition of intimidation by State officers of large blocks of Negroes who attempted to register and vote in a recent primary held in that State.

"In 1946, Mississippi passed a law exempting veterans from payment of poll taxes under certain conditions. A great movement of Negro veterans took place all over the State to register to vote. There were 66,972 discharged Negro veterans in Mississippi and practically 100 per cent of them could read and write."

This statement is not contained in the record nor is it justified by anything contained in the record. There is no testimony whatever in the record to show that there was any state-wide intimidation or that any negro anywhere had sought registration and was refused by any officer his right to register. In the trial court, various officers were examined and it could easily have been ascertained from the circuit clerk and others whether or not any negro had been refused registration. If he should be he has his right of appeal to the courts under the Constitution of the State referred to in this brief of mine already. This right of appeal would extend to final right of appeal to the United States Supreme Court. Furthermore there is no evidence that in 1946 that there was a great movement of negro veterans all over the State to register or vote. Nothing of that kind appears in this record and certainly it is not a matter of which the court would take judicial notice. On page 18 of the appellant's brief, it is stated: "From the testimony of a deputy sheriff in the instant case, it was ascertained that petitioner, an ignorant Negro youth, was taken to the local jail and placed in the office at approximately 1 p.m. on the afternoon of his arrest (R. 137). He was kept in this secluded office and was denied any opportunity to contact an attorney. . . . He was forced to remain so confined in the presence of numerous policemen and other law enforcement officials whose powers in his mind undoubtedly were greatly magnified, until about 8 or 8:30 that night. During all this time he was denied food and drink." I submit that a careful reading of all the evidence bearing on the matter does

not show that he was denied food and drink or that he was continually questioned during a long period. The evidence does not support this statement. He further states, "He was made to strip off his clothing and lie on the floor naked. There was some testimony which would lead to an inference that he was actually beaten. While on the floor he was continually told that he was lying; that he might as well tell the truth and that they were going to get it out of him anyhow." This last statement he refers to page 158 and page 336-179 of the record which is not the printed record but appears to have been in reference to the typewritten copy of the abridged record from which the printed copy of the record is made. I ask the court to carefully read the full testimony contained in the typewritten record at these pages and it will appear therefrom that the defendant was not maltreated or abused while in the custody of the officers and that his treatment was not different from that usually accorded to prisoners while officers are legitimately investigating crime and especially crimes of murder.

The State did not introduce all of the officers who participated in the investigation and the attorney for the defendant made the following statement: "If the Court please, I submit that if that is all he is going to offer, with the man being lots of times, when this witness wasn't present, he is the only one so far that has been offered on it, and the other officers were present; that he would have to show by all of those officers that none of them offered him any inducements. We don't have to show anything in connection with it until the proof is offered to show it is entirely voluntary. He has introduced here only one witness and one who was present only a part of the time, covered by the investigation and interrogation of this defendant." The Court stated: "Mr. Broadway, the Court is not in a position to direct the State's case. It can rule on what is before him at the time

it is offered and that, I think, is as far as the Court can go. The Court is not permitted to force the State to put on a witness." And on page 173 of the typewritten record, the Court stated: "All the Court can do is rule on what is before him. That is as far as I can go. If you wish to offer any proof, of course, you are at liberty to offer any proof, put on any officer you care to. I can't make you put on any proof, or make the State put on any."

The defendant did not testify himself as to any of the matters complained of in the investigation by the officers in the jail and elsewhere and the defendant did not testify on the merits either. This being true, the testimony of the State's witnesses must be accepted as the truth of what occurred during the investigation at the jail; at the carrying of the defendant to places where he pointed out articles that he had taken from Mr. Meadors or his place of business. The jury are the judges of the weight and worth of the testimony and the jury's finding of fact cannot be disturbed if supported by evidence. All inferences and conclusions of fact are for the consideration of the jury. See Ranson vs. State, 149 Miss. 262, 115 So. 208; Sauer vs. State, 166 Miss. 507, 144 So. 225; Hart vs. State, 115 So. 887; Hardy vs. State, 143 Miss. 352, 108 So. 727, and the many cases collected in Volume 5, Miss. Digest, annot. (West Pub. Co. edition) Criminal Law, Key No. 741 to 757, inclusive.

I therefore submit that the judgment should be affirmed.

Respectfully submitted,

GREEK L. RICE, *Attorney General*

By GEORGE H. ETHRIDGE,
Assistant Attorney General.

CERTIFICATE

I, George H. Ethridge, Assistant Attorney General of the State of Mississippi, hereby certify that I have this day mailed postage prepaid a true copy of the above and foregoing brief for the Appellee to Counsel for Appellant, Honorable Thurgood Marshall at his post office address at New York City, New York.

This the 29th day of October, 1947.

GEO. H. ETHRIDGE,
Assistant Attorney General.

SUPREME COURT OF THE UNITED STATES

No. 122.—October Term, 1947.

Eddie (Buster) Patton, Petitioner, v. State of Mississippi. } On Writ of Certiorari to The Supreme Court of The State of Mississippi.

[December 8, 1947.]

Mr. Justice Black delivered the opinion of the Court.

The petitioner, a Negro, was indicted in the Circuit Court of Lauderdale County, Mississippi, by an all-white grand jury, charged with the murder of a white man. He was convicted by an all-white petit jury and sentenced to death by electrocution. He had filed a timely motion to quash the indictment alleging that, although there were Negroes in the county qualified for jury service, the venires for the term from which the grand and petit juries were selected did not contain the name of a single Negro. Failure to have any Negroes on the venires, he alleged, was due to the fact that for a great number of years previously and during the then term of court there had been in the county a "systematic, intentional, deliberate and invariable practice on the part of administrative officers to exclude negroes from the jury lists, jury boxes and jury service, and that such practice has resulted and does now result in the denial of the equal protection of the laws to this defendant as guaranteed by the 14th amendment to the U. S. Constitution." In support of his motion petitioner introduced evidence which showed without contradiction that no Negro had served on the grand or petit criminal court juries for thirty years or more. There was evidence that a single Negro had once been summoned during that period but for some undisclosed reason he had not served, nor had he even appeared. And there was also evidence from one jury supervisor

that he had, at some indefinite time, placed on the jury lists the names of "two or three" unidentified Negroes. In 1940 the adult colored population of Lauderdale County, according to the United States Census, was 12,511 out of a total adult population of 34,821.

In the face of the foregoing the trial court overruled the motion to quash. The Supreme Court of Mississippi affirmed over petitioner's renewed insistence that he had been denied the equal protection of the laws by the deliberate exclusion of Negroes from the grand jury that indicted and the petit jury that convicted him. — Miss. —, 29 So. (2d) 96. We granted certiorari to review this serious contention.[1] — U. S. —.

Sixty-seven years ago this Court held that state exclusion of Negroes from grand and petit juries solely because of their race denied Negro defendants in criminal cases the equal protection of the laws required by the Fourteenth Amendment. *Strauder* v. *West Virginia*, 100 U. S. 303 (1880). A long and unbroken line of our decisions since then has reiterated that principle, regardless of whether the discrimination was embodied in statute[2] or was apparent from the administrative practices of state jury selection officials,[3] and regardless of whether the system for depriving defendants of their rights was "ingenious or ingenuous."[4]

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[1] Petitioner also argued that his conviction was based solely on an extorted confession; that use of this extorted confession denied him due process of law; and that the case should be reversed for that reason. The view we take as to the systematic exclusion of Negro jurors makes it unnecessary to pass on the alleged extorted confession.

[2] *Bush* v. *Kentucky*, 107 U. S. 110, 122.

[3] *Ex parte Virginia*, 100, U. S. 339; *Neal* v. *Delaware*, 103 U. S. 370; *Carter* v. *Texas*, 177 U. S. 442; *Rogers* v. *Alabama*, 192 U. S. 226; *Norris* v. *Alabama*, 294 U. S. 587; *Hollins* v. *Oklahoma*, 295 U. S. 394; *Hale* v. *Kentucky*, 303 U. S. 613; *Pierre* v. *Louisiana*, 306 U. S. 354; *Smith* v. *Texas*, 311 U. S. 128; *Hill* v. *Texas*, 316 U. S. 400.

[4] *Smith* v. *Texas*, 311 U. S. 128, 132.

Whether there has been systematic racial discrimination by administrative officials in the selection of jurors is a question to be determined from the facts in each particular case. In this case the Mississippi Supreme Court concluded that petitioner had failed to prove systematic racial discrimination in the selection of jurors, but in so concluding it erroneously considered only the fact that no Negroes were on the particular venire lists from which the juries were drawn that indicted and convicted petitioner.[5] It regarded as irrelevant the key fact that for thirty years or more no Negro had served on the grand and petit juries. This omission seriously detracts from the weight and respect that we would otherwise give to its conclusion in reviewing the facts, as we must in a constitutional question like this.[6]

It is to be noted at once that the indisputable fact that no Negro had served on a criminal court grand or petit jury for a period of thirty years created a very strong showing that during that period Negroes were systematically excluded from jury service because of race.[7] When such a showing was made, it became a duty of the State to try to justify such an exclusion as having been brought about for some reason other than racial discrimination. The Mississippi Supreme Court did not conclude, the State did not offer any evidence, and in fact did not make any claim, that its officials had abandoned their old jury selection practices. The State Supreme Court's conclusion of justification rested upon the following reasoning. Section 1762 of the Mississippi Code enumerates the qual-

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[5] *Akins* v. *Texas*, 325 U. S. 398, 403.

[6] *Norris* v. *Alabama*, 294 U. S. 587, 590; *Pierre* v. *Louisiana*, 306 U. S. 354, 358; *Akins* v. *Texas*, 325 U. S. 398, 402; *Fay* v. *New York*, 332 U. S. 261, 272.

[7] *Neal* v. *Delaware*, 103 U. S. 370, 397; *Norris* v. *Alabama*, 294 U. S. 587, 591; *Pierre* v. *Louisiana*, 306 U. S. 354, 361.

ifications for jury service, the most important of which apparently are that one must be a male citizen and "a qualified elector." Sections 241, 242, 243 and 244 of the state constitution set forth the prerequisites for qualified electors. Among other things these provisions require that each elector shall pay an annual poll tax, produce satisfactory proof of such payment, and be able to read any section of the state constitution, or to understand the same when read to him, or to give a reasonable interpretation thereof. The evidence showed that a very small number of Negro male citizens (the court estimated about 25) as compared with white male citizens, had met the requirements for qualified electors, and thereby become eligible to be considered under additional tests for jury service. On this subject the State Supreme Court said:

> "Of the 25 qualified negro male electors there would be left, therefore, as those not exempt, 12 or 13 available male negro electors as compared with 5,500 to 6,000 male white electors as to whom, after deducting 500 to 1,000 exempt, would leave a proportion of 5,000 nonexempt white jurors to 12 or 13 nonexempt negro jurors, or about one-fourth of one per cent negro jurors,—400 to 1. . . . For the reasons already heretofore stated there was only a chance of 1 in 400 that a negro would appear on such a venire and as this venire was of one hundred jurors, the sheriff, had he brought in a negro, would have had to discriminate against white jurors, not against negroes,—he could not be expected to bring in one-fourth of one negro." [8]

[8] Although this latter statement was made with particular reference to the special venire from which the petit jury was drawn, the reasoning of the court applied also to its grounds for holding that there was no discrimination in excluding Negroes from the grand jury.

The above statement of the Mississippi Supreme Court illustrates the unwisdom of attempting to disprove systematic racial discrimination in the selection of jurors by percentage calculations applied to the composition of a single venire.[9]

The petitioner here points out certain legislative record evidence[10] of which it is claimed we can take judicial notice, and which it is asserted establishes that the reason why there are so few qualified Negro electors in Mississippi is because of discrimination against them in making up the registration lists. But we need not consider that question in this case. For it is clear from the evidence in the record that there were some Negroes in Lauderdale County on the registration list. In fact, in 1945, the circuit clerk of the county, who is himself charged with duties in administering the jury system, sent the names of eight Negroes to the jury commissioner of the Federal District Court as citizens of Lauderdale County qualified for federal jury service. Moreover, there was evidence that the names of from thirty to several hundred qualified Negro electors were on the registration lists. But whatever the precise number of qualified colored electors in the county, there were some; and if it can possibly be conceived that all of them were disqualified for jury service by reason of the commission of crime, habitual drunkenness, gambling, inability to read and write, or to meet any other or all of the statutory tests, we do not doubt that the state could have proved it.[11]

We hold that the State wholly failed to meet the very strong evidence of purposeful racial discrimination made out by the petitioner upon the uncontradicted showing

[9] *Akins* v. *Texas*, 325 U. S. 398, 403.

[10] *Hearings before Special Committee to Investigate Senatorial Campaign Expenditures, 1946*, 79th Cong., 2d Sess. (1947).

[11] *Hill* v. *Texas*, 316 U. S. 400, 404–405.

that for thirty years or more no Negro had served as a juror in the criminal courts of Lauderdale County. When a jury selection plan, whatever it is, operates in such way as always to result in the complete and long-continued exclusion of any representative at all from a large group of Negroes, or any other racial group, indictments and verdicts returned against them by juries thus selected cannot stand. As we pointed out in *Hill* v. *Texas*, 316 U. S. 400, 406, our holding does not mean that a guilty defendant must go free. For indictments can be returned and convictions can be obtained by juries selected as the Constitution commands.

The judgment of the Mississippi Supreme Court is reversed and the case is remanded for proceedings not inconsistent with this opinion.

Reversed.